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To	Rebecca Hesse	
Fax#	7-1454	
From	Dave Wales	
Phone#	5-3855	

Thomas C. Willcox
Attorney-at-Law
 601 Indiana Avenue, N.W.
 Suite 500
 Washington, D.C. 20004
 Office: (202) 638-7541
 Fax: (202) 628-2881

*Member, District of Columbia,
 Pennsylvania Bars*

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VIA FAX 202 616-2645

United States Department of Justice
 Antitrust Division
 950 Pennsylvania Avenue, N.W.
 Washington, D.C. 20530

Re: Microsoft Settlement

Dear Sirs/Madams:

I submit this letter pursuant to the Tunney Act as a comment on the Microsoft settlement. Based on the comments discussed in more detail below that I heard Antitrust Chief Charles James offer in mid-October, in my opinion, the court should not approve the settlement.

I am an antitrust lawyer and solo practitioner in the District of Columbia. On October 16 of this year, in the late afternoon, I lunched at a table outside the Manhattan Deli, just north of the Navy Memorial on Pennsylvania Avenue. As I sat, I noticed Antitrust Chief James in conversation with another gentleman, about fifteen feet away from me. I heard Mr. James express some frustration about the Microsoft case, although I did not hear his exact words on that topic.

Then, I heard him say "It is going to take years to undo the damage done by Klein and Pitofsky."

I was stunned by this comment. Antitrust Chief James seemed to be saying his plans for the Antitrust Division include not just relaxing antitrust enforcement, but subverting accomplishments such as last summer's ruling by the District of Columbia Circuit Court of Appeals that Microsoft had abused its monopoly power. Such a philosophy clearly contradicts the testimony offered by Chief James during his confirmation hearings.

Two Fridays ago, less than a month later, Antitrust Chief James announced a settlement of the Microsoft case. In my view, given the attitude towards antitrust enforcement I heard expressed last month, he should recuse himself from the case, and career Justice lawyers should determine its future.

Sincerely yours,

Thomas C. Willcox

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